IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 5829 OF 2005

1. Baliram Dharma Patil.
2. Songya Dharma Patil. ... Applicants.

Versus.

The State of Maharasthra. ... Respondent.

Shri A.P.Mundargi with Shri R.P.Runwal for the Applicants.

Shri R.Y.Mirza, A.P.P. for the Respondent.

CORAM : ABHAY S. OKA, J.

DATED : 13th Sept., 2005.

P.C.:

1. Heard the learned Counsel for the Applicants and the learned A.P.P. for the State.

2. The offence registered against the Applicants and co-accused is under sections 147, 148, 149, 302, 323, 452, 336, 427 and 504 of the Indian Penal Code. The learned Counsel for the Applicant placed reliance on the copy of the order dated 26th July 2005 passed by the Sessions court by which the co-accused Vasant Ganya Gharat and Satyawan Gautam Patil were ordered to be enlarged on bail. He submitted that the role played by the Applicants in this Application is not different from the role played by Satyawan and hence the Applicants are entitled to be enlarged on bail for the reason of parity.

3. The learned A.P.P. on instructions fairly stated that there is no material difference between the role played by the co-accused Satyawan and the Applicants. He, however, invited my attention to the observation made by the Sessions Court in paragraph 5 of the order by which the bail application of the Applicants was rejected. He also pointed out that there is recovery of a stick at the instance of the Applicant No.1.

4. A perusal of the F.I.R. and other material on record show that there is hardly any difference between the role allegedly played by the Applicants and the co-accused Satyawan. At the highest the only different will be recovery of a stick at the instance of the Applicant No.1. However, perusal of the F.I.R. shows that the co-accused Satyawan was also possessing a stick. A general allegation has been made against co-accused Satyawan and the Applicants as regards assault on the deceased. The specific allegation against Satyawan and the present Applicants is that after the assault, the three of them dragged the deceased and threw him near a tree. In view of this position, the Applicants are entitled to be enlarged on bail for the reason of parity.

5. Hence the following order is passed:

(i) The Applicants shall be enlarged on bail in connection with C.R.No. I-43/2005 registered at Mumbra Police Station, Dist.Thane, subject to furnishing a personal bond of Rs.20,000/- each with one solvent surety in the like amount.

(ii) Bail is granted subject to condition that the Applicants will not enter the village Khidkali, Dist.Thane, till completion of trial.

(iii) The bail is granted subject to further condition that the Applicants will attend the concerned Police Station on every Sunday between 5.00 p.m. and 7.00 p.m. till completion of trial. The Applicants shall not leave Thane District without the prior intimation to the Investigating officer till completion of trial.

(iv) The Bail is granted subject to condition that the Applicants shall not, directly or indirectly, make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

(v) The Applicants shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the Applicants to delay the trial may be a ground for cancellation of bail.

(vi) Any observation made in this order shall not be construed as any finding or any expression of opinion on the merits of the case at the time of trial.

(vii) Application is disposed of in above terms.

Judge.